HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.1262 OF 2006

Between:

Lanka Krishna Mohan
. . .Appellant

AND

The Commissioner for Prohibition
and Excise, Government of
Andhra Pradesh, Hyderabad and others
. . .Respondents

:: JUDGMENT ::

Counsel for the Appellant : Shri E.Madan Mohan Rao

Counsel for Respondent Nos.1&2 : Government Pleader for Prohibition and Excise

1st December, 2006

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Per G.S.SINGHVI, CJ

Having failed to persuade the learned Single Judge to quash order dated 19.08.2006 passed by Commissioner of Prohibition and Excise, Andhra Pradesh, whereby permission was granted to respondent No.3, M/s. Durga Wines (A-4 licensee of Kolanukonda Village, Undavalli Mandal) to shift to Undavalli centre within the same Mandal, the appellant has preferred this appeal under Clause 15 of the Letters Patent.

The appellant is a A-4 licensee. He was granted licence under the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short 'the Rules') for running a shop at Bhavanipuram, which falls within the limits of Vijayawada Municipal Corporation. Respondent No.3 was granted A-4 licence on 6-7-2006 for Kolanukonda village, Tadepalli Mandal, Guntur District. This was objected by the residents of Kolanukonda. After three days, respondent No.3 submitted an application for permission to shift the licensed premises from Kolanukonda to Undavalli village of Tadepalli Mandal by citing the objections of the villagers as the reason. Some persons, who were granted 2-B licences at Undavalli center under the Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short, 'the Bar Rules') for running bar and restaurants represented against the shifting of the premises of respondent No.3 from Kolanukonda to Undavalli. By an order dated 19.8.2006, respondent No.1 granted permission to respondent No.3 to shift the licensed premises from Kolanukonda

Village to Undavalli centre. The bar licensees challenged that order by filing revision petition. The same was entertained by the Minister, Prohibition & Excise, who passed order dated 1-9-2006 and stayed the shifting of the licensed premises of respondent No.3. The latter challenged the stay order in Writ Petition No.18776 of 2006. The learned Single Judge noted that Rule 29(3) of the Shop Rules, which provides for shifting of licensed premises, had been amended vide notification dated 26-5-2006 and held that the discretion exercised by respondent No.1 in granting permission to respondent No.3 to shift the licensed premises from Kolanukonda Village to Undavalli centre does not suffer from any legal infirmity.

Shri E.Madan Mohan Rao, learned counsel for the appellant argued that the order impugned in the writ petition is ultra vires Rule 29 (3) of the Shop Rules and the learned Single Judge committed serious error by refusing to set aside order dated 19.08.2006. He submitted that even though the transfer of the licensed premises of respondent No.3 is within the same Mandal, the learned Single Judge should have annulled order dated 19-8-2006 because the same would adversely affect the appellant's business. He further argued that the power vested in respondent No.1 under Rule 29(3) of the Shop Rules is required to be exercised for valid reasons and there did not exist any reason for accepting the request made by respondent No.3, and as such, order dated 19-8-2006 is liable to be declared violative of Rule 29(3) of the Shop Rules.

We have considered the submissions of the learned counsel and carefully perused the well-reasoned order passed by the learned Single Judge. In our opinion, the appeal is meritless and is liable to be dismissed summarily.

There is no dispute between the parties that soon after grant of the A-4 licence to respondent No.3 for establishing shop at

Kolanukonda Village, the residents expressed their resentment compelling the licensee to apply for transfer. In the application made by him, respondent No.3 indicated his unequivocal willingness to pay the additional fee and other charges. Respondent No.1 considered the application of respondent No.3 in the light of the recommendations made by Prohibition and Excise Superintendent, Guntur and Deputy Commissioner of Prohibition and Excise, Guntur and felt convinced that shifting of the shop from Kolanukonda to Undavalli Centre will be in public interest.

The learned Single Judge noted that the vires of Rule 29(3) of the Shop Rules, as amended vide notification dated 26.05.2006, has not been challenged and held that the appellant, who was having A-4 licence for a shop situated within the limits of Vijayawada Municipal Corporation, does not have the locus to question the order passed by respondent No.1, whereby he permitted transfer of the licensed premises of respondent No.3.

We entirely agree with the learned Single Judge that the order of transfer passed by respondent No.1 does not suffer from any legal infirmity and the exercise of power by respondent No.1 is not vitiated by any error of law. It is neither the pleaded case of the appellant nor the learned counsel argued that respondent No.1 had acted with any oblique motive or malice animus. Therefore, mere possibility of some adverse impact on his business does not entitle the appellant to seek issue of a writ to quash the permission granted by respondent No.1 for shifting of the licensed premises of respondent No.3.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, W.A.M.P.No.2655 of 2006 filed by the appellant for interim stay is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

01.12.2006

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